

Federal Reserve System

§ 230.11

required under § 230.4(a)(2), and need not comply with paragraphs (d)(2)(i) and (ii) of this section for disclosures required under § 230.8.

(e) *Redelivery.* When a disclosure provided by electronic communication is returned to a depository institution undelivered, the depository institution shall take reasonable steps to attempt redelivery using information in its files.

(f) *Entities other than a depository institution.* A person other than a depository institution that is required to comply with this part may use electronic communication in accordance with the requirements of this section, as applicable.

[Reg. DD, 66 FR 17803, Apr. 4, 2001]

§ 230.11 Additional disclosure requirements for institutions advertising the payment of overdrafts.

(a) *Periodic statement disclosures—*(1) *Disclosure of Total Fees.* (i) Except as provided in paragraph (a)(2) of this section, if a depository institution promotes the payment of overdrafts in an advertisement, the institution must separately disclose on each periodic statement:

(A) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient funds and the account becomes overdrawn; and

(B) The total dollar amount for all fees imposed on the account for returning items unpaid.

(ii) The disclosures required by this paragraph must be provided for the statement period and for the calendar year to date, for any account to which the advertisement applies.

(2) *Communications not triggering disclosure of total fees.* The following communications by a depository institution do not trigger the disclosures required by paragraph (a)(1) of this section:

(i) Promoting in an advertisement a service for paying overdrafts where the institution's payment of overdrafts will be agreed upon in writing and subject to the Board's Regulation Z (12 CFR part 226);

(ii) Communicating (whether by telephone, electronically, or otherwise) about the payment of overdrafts in re-

sponse to a consumer-initiated inquiry about deposit accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, an automated teller machine (ATM), or an institution's Internet site, is not a response to a consumer-initiated inquiry for purposes of this paragraph;

(iii) Engaging in an in-person discussion with a consumer;

(iv) Making disclosures that are required by Federal or other applicable law;

(v) Providing a notice or including information on a periodic statement informing a consumer about a specific overdrawn item or the amount the account is overdrawn;

(vi) Including in a deposit account agreement a discussion of the institution's right to pay overdrafts;

(vii) Providing a notice to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or providing a general notice that items overdrawing an account may trigger a fee; or

(viii) Providing informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service.

(3) *Time period covered by disclosures.* An institution must make the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after an institution advertises the payment of overdrafts. An institution may disclose total fees imposed for the calendar year by aggregating fees imposed since the beginning of the calendar year, or since the beginning of the first statement period that year for which such disclosures are required.

(4) *Termination of promotions.* Paragraph (a)(1) of this section shall cease to apply with respect to a deposit account two years after the date of an institution's last advertisement promoting the payment of overdrafts applicable to that account.

(5) *Acquired accounts.* An institution that acquires an account must thereafter provide the disclosures required

by paragraph (a)(1) of this section for the first statement period that begins after the institution promotes the payment of overdrafts in an advertisement that applies to the acquired account. If disclosures under paragraph (a)(1) of this section are required for the acquired account, the institution may, but is not required to, include fees imposed prior to acquisition of the account.

(b) *Advertising disclosures for overdraft services*—(1) *Disclosures*. Except as provided in paragraphs (b)(2), (b)(3), and (b)(4) of this section, any advertisement promoting the payment of overdrafts shall disclose in a clear and conspicuous manner:

(i) The fee or fees for the payment of each overdraft;

(ii) The categories of transactions for which a fee for paying an overdraft may be imposed;

(iii) The time period by which the consumer must repay or cover any overdraft; and

(iv) The circumstances under which the institution will not pay an overdraft.

(2) *Communications about the payment of overdrafts not subject to additional advertising disclosures*. Paragraph (b)(1) of this section does not apply to:

(i) An advertisement promoting a service where the institution's payment of overdrafts will be agreed upon in writing and subject to the Board's Regulation Z (12 CFR part 226);

(ii) A communication by an institution about the payment of overdrafts in response to a consumer-initiated inquiry about deposit accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, ATM, or an institution's Internet site, is not a response to a consumer-initiated inquiry for purposes of this paragraph;

(iii) An advertisement made through broadcast or electronic media, such as television or radio;

(iv) An advertisement made on outdoor media, such as billboards;

(v) An ATM receipt;

(vi) An in-person discussion with a consumer;

(vii) Disclosures required by federal or other applicable law;

(viii) Information included on a periodic statement or a notice informing a consumer about a specific overdrawn item or the amount the account is overdrawn;

(ix) A term in a deposit account agreement discussing the institution's right to pay overdrafts;

(x) A notice provided to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee; or

(xi) Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service.

(3) *Exception for ATM screens and telephone response machines*. The disclosures described in paragraphs (b)(1)(ii) and (b)(1)(iv) of this section are not required in connection with any advertisement made on an ATM screen or using a telephone response machine.

(4) *Exception for indoor signs*. Paragraph (b)(1) of this section does not apply to advertisements for the payment of overdrafts on indoor signs as described by §230.8(e)(2) of this part, provided that the sign contains a clear and conspicuous statement that fees may apply and that consumers should contact an employee for further information about applicable fees and terms. For purposes of this paragraph (b)(4), an indoor sign does not include an ATM screen.

[70 FR 29593, May 24, 2005]

APPENDIX A TO PART 230—ANNUAL PERCENTAGE YIELD CALCULATION

The annual percentage yield measures the total amount of interest paid on an account based on the interest rate and the frequency of compounding.¹ The annual percentage

¹The annual percentage yield reflects only interest and does not include the value of any bonus (or other consideration worth \$10 or less) that may be provided to the consumer to open, maintain, increase or renew an account. Interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future.